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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 1032

EVERETT I. WATSON,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF MICHIGAN,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioner, Everett I. Watson, a Negro, prays for the issuance of a writ of certiorari to review the decisions of the Supreme Court of the State of Michigan, in affirming on December 29, 1943, the judgment of the Circuit Court for the County of Wayne, in the State of Michigan, and in denying on February 24, 1944, petitioner's request for rehearing, in connection with certain criminal proceedings.

I.

Statement of the Case.

Petitioner, a Negro, was convicted in the Circuit Court for Wayne County, Michigan, upon an information filed against him and 79 other identified persons charging them

in Count One with conspiring together to aid, assist and enable the setting up or promotion, and management of lottery or gift enterprises, commonly known as policy, mutuel numbers and clearing houses (R. 20); and in Count Two with having conspired with and among themselves and others not named to procure the wilful, intentional and corrupt failure, omission, and neglect on the part of certain public officials in the County to perform their respective official duties, thereby permitting lotteries and gift enterprises to be set up, promoted, and conducted by defendants and their co-conspirators [1] (R. 23).

Two days before trial 4 defendants withdrew their pleas of "Not Guilty" and pleaded "Guilty" (R. 5), and 2 more defendants changed their pleas from "Not Guilty" to "Guilty" during the trial (R. 6, 8). 65 defendants, including petitioner, were tried jointly.[2] At the close of the people's case, 22 defendants were discharged on directed verdict (R. 9). Count One of the information was dismissed (R. 52), and the case submitted to the jury on Count Two against petitioner and 40 co-defendants (R. 11, 76). The jury returned a verdict of "Not Guilty" as to 18 defendants; "Guilty" as to 23 defendants, including petitioner (R. 11). Petitioner was sentenced to the State Prison for a term of 2½ to 5 years (R. 11).

The trial of the case began September 17, 1941 (R. 7). Approximately three weeks, until October 8, 1941, were con-

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[1] Count Two is referred to throughout the proceedings as charging the obstruction of justice.

[2] The number of 65 defendants being placed on trial jointly is reached as follows:

Defendants changing pleas to "Guilty" during the trial	2
Defendants discharged on directed verdict	22
Defendants found not guilty	18
Defendants found guilty	23
Defendants placed on trial jointly	65

sumed in selecting a jury (R. 7). The question in this case arises on petitioner's claim that he was there denied due process and the equal protection of the law by the prosecuting attorney's misuse of the 325 peremptory challenges available to the people in excluding from the jury more than 30 qualified Negro veniremen because of their race or color.

Section 17305, Michigan Compiled Laws of 1929, which governs the exercise of peremptory challenges in cases like the present, provides:

> "Any person who is put on trial for an offense which is not punishable by death or life imprisonment shall be allowed to challenge peremptorily five (5) of the persons drawn to serve as jurors and no more; and the prosecuting officers on behalf of the people shall be allowed to challenge peremptorily in such cases five (5) of such jurors and no more. In cases involving two (2) or more defendants who are being jointly tried for such an offense, each of said defendants shall be allowed to challenge peremptorily five (5) persons returned as jurors and no more; and the prosecuting officers on behalf of the people shall be allowed to challenge peremptorily as many times five (5) of the persons returned as jurors as there may be defendants being so jointly tried."

Inasmuch as 65 defendants, including petitioner, were placed on trial jointly, the people had 325 peremptory challenges to petitioner's 5.

In selecting the jury, several jury panels totalling in all about 300 veniremen were practically exhausted. During this process it became apparent that the prosecuting attorney was misusing the 325 peremptory challenges available to the people (unconstitutionally, petitioner claims) in pursuance of a premeditated and studied plan to obtain a jury of his own choosing and to bar all qualified Negro

veniremen from serving on the jury solely because of race.[3]

More than 30 Negro veniremen presumptively qualified,[4] upon being called to serve on the trial jury were immediately eliminated by peremptory challenge by the prosecuting attorney. His abuse in use of his peremptory challenges for purpose of hand-picking the jury and excluding all qualified Negro veniremen therefrom is reflected in the written motion for mistrial filed October 9, 1941 by 6 defendants, which is nowhere contradicted or controverted in the record. This motion *inter alia* states:

"

IV.

"Because the exercise of peremptory challenges in the selection of a jury by the prosecution was in pursuance of a premeditated and studied plan of procedure by the state to bar any Negro veniremen from serving on said jury and the carrying out of said plan and design was readily evidenced by the challenging of every Negro by the State and said discrimination was imparted by observation to the selected jury showing a definite bias towards members of the Negro race and resulting in irreparable injury to the defendants herein and particularly to those defendants who are members of the Negro race.

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[3] The testimony concerning the selection of the jury was not preserved in the printed record, but the facts concerning the number of veniremen called, the exclusion of all Negroes from the jury were conceded in proceedings before the Michigan Supreme Court. (See opinion in companion case, *People* v. *Roxborough*, 307 Mich. 575, 588-590, which was adopted by reference by the Michigan Supreme Court in the instant case, *People* v. *Watson*, 307 Mich. 596, 609). Nor did the people ever deny or controvert the affidavit of John R. Williams, referred to *infra*, charging the prosecuting attorney with admitting he had purposely eliminated all Negroes called as jurors (R. 63).

[4] The record shows the number of Negro veniremen peremptorily challenged by the prosecuting attorney may have exceeded 40 (Certified original record, p. 2350 et seq.).

V.

"Because the tactics pursued by the prosecution as outlined in the preceding paragraph, are in direct contravention of the due process clause contained in Article 5 of the Bill of Rights of the Constitution of the United States of America and Section 16, Article 2 of the Constitution of the State of Michigan of 1908 and deprive the defendants of a fair and impartial trial by a jury of their peers; (see opinion of United States Supreme Court in the recent famous Scottsboro case).
"....." (R. 124.)

A motion for a new trial stressing *inter alia* the same violation of constitutional rights of defendants by the prosecuting attorney in summarily excluding all Negro veniremen was made by 4 defendants, supported by their respective affidavits (Certified oriignal record, P. 2349 et seq.).

On February 18, 1942—after verdict but pending disposition of the motions for new trial filed—proof became available for the first time substantiating what was theretofore only strong suspicion: that the prosecuting attorney had used his peremptory challenges to exclude all qualified Negro veniremen from the jury solely because of their race or color. On that date a co-defendant John W. Roxborough obtained the affidavit of John R. Williams, editor of the Detroit edition of the Pittsburgh Courier, a Negro weekly newspaper, reporting a conference with the prosecuting attorney as follows:

"* * *

"Q. 'Mr. O'Hara, how does it happen that you have continually for days excused only the Negro jurors who have been called for service in this case when many of them are without question as qualified as any of the others who have been called?'

"A. 'The Roxborough-Watson interests are so wide that I prefer not to have any Negroes on the jury, and further practically every Negro in Detroit is a number

or policy player anyhow, and as such is unfit to serve on a case involving such matters.'

"* * *." (R. 62.)

Roxborough the very same day, February 18, 1942, filed his supplemental motion for a new trial alleging as well that his constitutional rights had been violated because of the exclusion by the prosecuting attorney of all qualified Negroes from the trial jury because of race, supporting said motion by the Williams affidavit (R. 60). The trial court considered, overruled the motion, and filed a written opinion (see par. 13, R. 73).

On appeal to the Michigan Supreme Court, in his Assignment of Error No. 47, petitioner assigned the prejudicial conduct of the prosecuting attorney in misusing his peremptory challenges and in striking every qualified Negro venireman as an invasion of his constitutional rights (R. 43). He pressed the point in his brief. The Michigan Supreme Court specifically considered the question, dealt with it at length in its opinion in the *Roxborough* case (307 Mich., loc. cited, at pp. 588-594) and incorporated the *Roxborough* opinion by reference in petitioner's case (307 Mich., loc. cited, at p. 609). The Court held petitioner's rights had not been violated in the selection of the jury (307 Mich., loc. cited, at p. 593).

Application for rehearing repeating the claim of violation of petitioner's constitutional rights was duly submitted, and denied (R. 111-119). The Michigan Supreme Court thereafter stayed further proceedings in the case pending application to this Court for a writ of certiorari (R. 120).

Petitioner appends as Exhibit A to this petition his affidavit (Appdx. 1) affirming that this application is made in good faith and not for delay, that he is innocent of the crime of which he has been convicted, that he has a valid and complete defense but his defense was not presented at

the trial due to error in judgment on the part of his trial counsel in relying too heavily on petitioner's motion for a directed verdict and the insufficiency of the people's proofs.

II.

Question Presented.

Was petitioner deprived of due process and the equal protection of the law guaranteed him by Section 1 of the 14th Amendment to the Constitution of the United States, by the prosecuting attorney peremptorily challenging every qualified Negro venireman (upwards of 30) solely because of his race or color?

III.

Reasons for Allowance of the Writ.

1. The Michigan Supreme Court has considered and denied petitioner's claim of rights guaranteed him under the Constitution of the United States, 14th Amendment, Section 1, in sustaining the prosecuting attorney's use of his peremptory challenges in this case.

2. The Michigan Supreme Court considered the application of Section 17305, Compiled Laws of Michigan of 1929, to the facts of this case, decided against a claim of the application of said statute violating petitioner's right to due process and equal protection, and decided in favor of its constitutionality.

3. The questions involved are of general public importance affecting the fundamental structure of jury trials, and are questions never directly passed upon by this Court.

4. The Michigan Supreme Court has decided herein a Federal question of substance not determined by this Court,

and its decision is not in accord with the line of decisions of this Court on the exclusion of qualified Negroes from jury service solely because of their race or color.

IV.

Prayer.

WHEREFORE petitioner Everett I. Watson prays that a writ of certiorari issue under the seal of this Court directed to the Supreme Court of Michigan commanding the said court to certify and send to this Court a full and complete transcript of the record and of the proceedings of said court had in this cause numbered and entitled on its docket No. 42-089, The People of the State of Michigan, Plaintiff-Appellee *v.* Everett I. Watson, Defendant-Appellant, to the end that this cause may be reviewed and determined by this Court and that the judgment of the said Supreme Court of Michigan be reversed and for such further relief as this Court may deem proper.

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